

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Applications of Sprint Nextel Corporation,)	IB Docket No. 12-343
Transferor)	
)	
SoftBank Corp., and Starburst II, Inc.,)	
Transferees)	
)	
Joint Applications for Consent to Transfer of)	
Control of Licenses, Leases, and)	
Authorizations; and Petition for Declaratory)	
Ruling under Section 310(b)(4) of the)	
Communications Act of 1934, as amended)	

OPENING COMMENTS OF THE GREENLINING INSTITUTE

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OPENING COMMENTS OF THE GREENLINING INSTITUTE

The Greenlining Institute (“Greenlining”) hereby files these Opening Comments in the above-captioned matter pursuant to Section 309(d)(I) of the Communications Act of 1934,¹ and the FCC’s Public Notice of December 27, 2012.²

Based on its initial and limited review of the proposed transaction, Greenlining believes that the proposed transaction between Sprint Nextel Corporation (“Sprint”), SoftBank Corp. (“SoftBank”), and Starburst II, Inc. could serve the public interest³ Based on Sprint’s statements, Greenlining believes that, as a result of the proposed transaction, Sprint could emerge as a “maverick” company with the power to disrupt the wireless market, driving down prices and increasing quality of service. However, there

¹ 47 U.S.C. § 309(d)(I) (2011).

² FCC Public Notice, DA 12-2090, Docket No. 12-313 (December 27, 2012) (Revising Pleading Cycle).

³ These Opening Comments refer to Sprint, SoftBank and Starburst II, Inc. jointly as “Applicants.”

are some concerns about the proposed transaction's potential impacts on low-income communities and communities of color. Greenlining respectfully requests that the Commission further investigate those issues and take whatever steps are necessary to ensure that the proposed transaction's benefits accrue to low-income communities and communities of color.

These Opening Comments are based on Greenlining's review of currently available documents. Greenlining expects that during the course of the proceedings, more information will become available. Accordingly, Greenlining will supplement these Comments as appropriate.

I. STATEMENT OF FACTS

Applicants state that the proposed transaction would allow Sprint to more effectively compete against AT&T and Verizon.⁴ Applicants state that "the proposed transaction poses no risk of competitive harm," because SoftBank does not have any "attributable interests in any U.S. wireless carriers or compete with Sprint wireline telecommunications services."⁵ Applicants further state that the proposed transaction will "stimulate economic growth and promote job creation."⁶ As a result of the proposed transaction, SoftBank will have the ability to select six members of Sprint's ten-member Board of Directors, giving SoftBank control of the Board.⁷

During a meeting between representatives of Sprint and Greenlining, Sprint's representatives stated that Sprint did not contemplate changes in service as a result of the

⁴ Public Interest Statement at p. 13.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at p. 8, note 11.

transaction.⁸ However, the Sprint representatives noted that the Sprint entities' current intent to make no changes to service could not be understood as a guarantee that no changes would occur because of the changes to the Board of Directors and SoftBank's influence.⁹ Accordingly, Sprint could make no guarantees that there would be no changes in service.¹⁰

II. ARGUMENT

In order to ensure that the proposed transaction is in the public interest, the Commission should investigate the effect of that transaction on the availability, affordability, and quality of low-cost phone services. Additionally, the Commission should investigate whether the proposed transaction will accelerate deployment of advanced services to low-income communities and communities of color. Finally, the Commission should investigate the proposed transaction's impacts on net neutrality, diversity, and jobs.

A. Applicants Must Prove, By A Preponderance Of The Evidence, That The Proposed Transaction Is In The Public Interest.

A party seeking the acquisition or transfer of a license bears the burden of proving to the Commission, by a preponderance of the evidence, that the proposed transaction will serve the public interest, convenience, and necessity.¹¹ In making this determination, the Commission first assesses "whether the proposed transaction complies with the specific

⁸ Meeting between Stephen Kutka and Nick Selby (Sprint), Paul Goodman and Stephanie Chen (Greenlining), (December 11, 2012) (*hereafter*, Sprint-Greenlining Meeting). This meeting was also attended by a number of other consumer rights groups.

⁹ *Id.*

¹⁰ *Id.*

provisions of the Communications Act, other applicable statutes, and the Commission's rules."¹²

When reviewing a transaction, the Commission considers the competitive effects of that transaction on the public interest; however, the Commission's public interest inquiry extends far beyond potential competitive effects.¹³ The Commission also considers "whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits."¹⁴ The Commission's public interest inquiry includes a consideration of, "among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest."¹⁵

The Commission then considers whether the acquisition "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes."¹⁶ If there is a risk of harm, the Commission employs "a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits."¹⁷ If the potential

¹¹ Order In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).

¹² *Id.*

¹³ *Id.* at 8717.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

public interest harms outweigh the potential public interest benefits, the transaction is not in the public interest.¹⁸

B. The Commission Should Investigate the Effect of the Proposed Transaction on Low-Cost Phone Services.

1. The Commission Should Investigate the Proposed Transaction's Impact on Pricing for Low-Cost Phone Services.

Joint Applicants state that “the proposed transaction poses no risk of competitive harm,” because SoftBank does not have any “attributable interests in any U.S. wireless carriers or compete with Sprint wireline telecommunications services.”¹⁹ While the proposed transaction arguably does not raise any concerns under the Commission’s traditional antitrust analysis, Greenlining is concerned that the proposed transaction could harm the public interest by eliminating competition in the market for low-cost phone services.

As a self-described “value provider,” Sprint wireless has traditionally offered phone services that are somewhat more affordable to low-income customers.²⁰ Sprint has stated that after the transaction is completed, it will continue to market to those consumers, primarily through its pre-paid brands.²¹ Additionally, Sprint intends to expand its current offering of wireless Lifeline services through its Assurance brand.²² There has been significant press coverage about the “free phones to the homeless” that

¹⁸ *Id.*

¹⁹ Public Interest Statement at 13.

²⁰ Sprint-Greenlining Meeting.

²¹ *Id.*

²² *Id.*

will be provided by Assurance.²³ Presumably, Sprint intends to continue its strong outreach and marketing to low income customers through its various wireless entities and products including Assurance Wireless and Boost Mobile. These national prepaid offerings have served a valuable niche in the wireless telephony marketplace.

Greenlining is confident that Sprint's representations in its Application that current service offerings will not be impacted are genuine. However, it is unclear whether SoftBank and the new company's Board of Directors will share the same objectives. A brief review of the SoftBank website and related searches did not reveal any of SoftBank's current initiatives to help low income customers.²⁴

There is a risk that, as a result of the proposed transaction, Sprint will stop offering low-cost services. Applicants' motivation for entering into the proposed transaction appears to be to allow Sprint to more effectively compete against AT&T and Verizon.²⁵ However, the Public Interest Statement is silent regarding the new company's plans to compete against other "value" providers, such as T-Mobile, MetroPCS, and Leap. If Sprint is successful, it will find itself serving a larger and larger number of "high revenue" customers. As a business matter, Sprint could find it more profitable to begin eliminating its low-cost plans in order to dedicate its resources to gaining more high revenue customers. Accordingly, the proposed transaction could reduce the number of

²³ Fagan, Kevin, *PUC set to OK free phones for homeless*, SF Gate (December 9, 2012), available at <http://www.sfgate.com/news/article/PUC-set-to-OK-free-phones-for-homeless-4104121.php>; Hubert, Cynthia, *California PUC approves giving free cellphones to poor, homeless*, Sacramento Bee (December 14, 2012), available at <http://www.sacbee.com/2012/12/14/5053797/california-puc-approves-giving.html>

²⁴ See SoftBank web page, <http://mb.softbank.jp/en/>. SoftBank does discuss its programs to help those with disabilities and youth. See <http://www.softbank.co.jp/en/initiatives/>.

²⁵ Public Interest Statement at p. 13.

available low-cost plans in a subscriber's service area, resulting in higher prices.

Greenlining submits that additional investigation is required to determine how the proposed transaction will affect the availability and pricing of low-cost services.

2. The Commission Should Investigate the Proposed Transaction's Impact on Quality of Service.

In addition to the uncertainty regarding Sprint's services that would necessarily result from the shift in Board control that would accompany a SoftBank takeover of Sprint, the issue of service quality is further complicated by the fact that the proposed transaction involves both wireline and wireless assets. It is unclear how much of SoftBank's \$20 billion investment in Sprint would be allocated to its wireline assets, and how much it would be allocated to its wireless services. Accordingly, it is not possible to determine whether, and to what extent that investment will affect service quality for wireline and/or wireless customers. Accordingly, Greenlining submits that additional investigation is required to determine how the proposed transaction will affect quality of service.

3. The Commission Should Conduct Additional Investigation and Obtain Sufficient Assurances from All Parties to the Transaction that Low-Income Consumers are Protected.

Greenlining is confident that Sprint's representations in its Application that current service offerings will not be impacted are genuine. Unfortunately, while it is clear that Sprint would like to continue to offer value-oriented, low-cost services, it is unclear whether SoftBank intends to do the same. The new company's Board of Directors could decide to substantially change or even terminate low-cost wireless offerings despite Sprint's best intentions. Greenlining respectfully requests that the

Commission conduct additional investigation and obtain sufficient assurances from all parties to the transaction that low-income consumers are protected.

C. The Commission Should Investigate the Proposed Transaction's Impact on Deployment of Advanced Services.

In deciding whether a transaction is in the public interest, the Commission considers whether the transaction will accelerate private sector deployment of advanced services.²⁶ Applicants state that the proposed transaction will allow the new company to “deploy wireless broadband services more aggressively and offer consumers innovative new mobile Internet services and applications.”²⁷ Additionally, the new company’s increased economies of scale will allow Sprint to offer a wider variety of handsets.²⁸

Mobile wireless service is particularly important to low-income consumers and communities of color, as it may be their only access to broadband. The Commission’s National Broadband Plan noted that only 40% of low-income consumers adopted broadband, a much lower rate than the national average (65%).²⁹ It is more likely that a low-income consumer’s wireless device is their only means of accessing the internet.³⁰ Some low-income consumers are unable to obtain premium services because of issues of creditworthiness or prior disconnections.³¹

²⁶ AT&T/Cellco Order at 8717 ¶ 23.

²⁷ Public Interest Statement at 23.

²⁸ *Id.* at 27.

²⁹ See Federal Communications Commission, Connecting America: The National Broadband Plan 167, Exhibit 9-A (March 2010) (hereafter, “National Broadband Plan”).

³⁰ Pew Internet and American Life Project, Mobile Access 2010 10, (2010), *available at* http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Access_2010.pdf (*hereafter*, Pew Mobile Access Report).

³¹ See Catherine J. K. Sandoval, Comment, In the Matter of Framework for Broadband Internet Service 7, GN Docket No. 10-127 (2010).

African Americans and Hispanics also adopt broadband at lower rates – 59% and 49% respectively.³² African-Americans and Latinos are also more likely to access the internet through mobile services.³³ Thus, these communities are at the low points of the “Digital Divide.” Accordingly, to bridge the Digital Divide, it is critical that these communities gain access to advanced services. Greenlining respectfully requests that the Commission conduct additional investigation to ensure that the proposed transaction results in the deployment of advanced services to low-income consumers and consumers of color.

D. The Commission Should Investigate the Proposed Transaction’s Impact on Net Neutrality

During the Commission’s Net Neutrality proceeding, Sprint opposed net neutrality regulations.³⁴ Their biggest concern was the rule letting consumers use any handset/device.³⁵ Greenlining is concerned that post-transaction, the new company will have incentives to prioritize certain traffic on its network.

SoftBank has a long-standing relationship with Yahoo,³⁶ and owns minority shares in Zynga and a number of other mobile app businesses.³⁷ Greenlining is concerned that the new company could use its network management practices to give preferential treatment to content providers owned by SoftBank. However, in conversations with Greenlining, Sprint indicated that it now embraces an open approach

³² See Pew Mobile Access Report, *supra* note 44, at 10.

³³ *Id.*

³⁴ See Comments of Sprint Nextel Corporation, In the Matter of Preserving the Open Internet Broadband Industry Practices, WC Docket No. 07-54 (January 14, 2010).

³⁵ *Id.* at 26.

³⁶ Public Interest Statement at 19.

³⁷ *Id.* at 6.

to the internet.³⁸ Greenlining respectfully requests that the Commission conduct additional investigation to ensure that the effects of the proposed transaction are consistent with the Commission's net neutrality principles.

E. The Commission Should Investigate the Proposed Transaction's Impact on Diversity.

Greenlining is concerned about potential negative impacts that the proposed transaction may have on diversity. For example, Sprint has been making progress in California on workforce and supplier diversity efforts.³⁹ However, it is unclear whether Sprint's new Board of Directors will maintain the same commitment to supplier and workforce diversity. The Commission should investigate Sprint's post-transaction plans regarding workforce and supplier diversity.

F. The Commission Should Investigate the Proposed Transaction's Impact on Jobs.

In considering the public interest effects of a proposed transaction, the Commission considers possible impacts on jobs.⁴⁰ The Joint Application states that the proposed transaction will "stimulate economic growth and promote job creation."⁴¹ Greenlining urges the Commission to investigate what, if any, changes may be made to Sprint's employee benefits and any other potential impacts the proposed transaction may have on Sprint's employees.

³⁸ Sprint-Greenlining Meeting.

³⁹ See Samuel Kang and Erin Delaney, The Greenlining Institute, Supplier Diversity Report Card: Another Record-Breaking Year (June 2012), *available at* <http://greenlining.org/resources/pdfs/SDRC2012forGIwebsite.pdf>.

⁴⁰ See Applications of AT&T and Deutsche Telekom AG, WT Docket No. 11-65, Order and Staff Analysis and Findings, 26 FCC Red 16184, 16293 (2011).

⁴¹ Joint Application at 13.

III. THE COMMISSION SHOULD REQUEST ADDITIONAL INFORMATION FROM SOFTBANK.

As discussed above, the structure of the transaction will allow SoftBank to take a controlling interest in the Sprint Board of Directors. As a result, mostly due to financial rules restricting the parties to the merger from discussing certain issues, the Application does not provide sufficient detail or assurances about the impact on Sprint's quality of service and its future business plans to ensure that the transaction is in the public interest. This uncertainty regarding potential impacts on Sprint's current service offerings and the new company's ability to commit to maintain those impairs the Commission's ability to judge the impact from this transaction. The Commission should request additional information directly from SoftBank on these issues.

IV. IF THE COMMISSION APPROVES THE TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST.

The Commission can prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act.⁴² The Commission can use its "...extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits."⁴³ Should the Commission approve the application, Greenlining asks that the Commission take measures to ensure that the public interest is protected. The Commission should ensure that low-income consumers are able to obtain affordable value wireless services and next-generation wireless services. Additionally, the Commission should preserve net neutrality and protect jobs. Finally, the Commission should require the new company to

⁴² 47 U.S.C. § 303, subdivision (f); AT&T/Cellco Order at 8717-8718.

⁴³ AT&T/Cellco Order at 8718.

pass the economic benefits of the transaction through to consumers, promote diversity, and bridge the digital divide.

V. CONCLUSION

Greenlining appreciates Sprint's commitment to providing affordable wireless services to low-income consumers and communities of color. This commitment was a major factor in Greenlining's initial evaluation that the proposed transaction appeared to serve the public interest. Sprint's commitment to low-income customers is well documented in their public statements. However, it is unclear whether SoftBank, and therefore the new company, share those same sentiments. Accordingly, it is unclear whether the proposed transaction will actually benefit those customers.

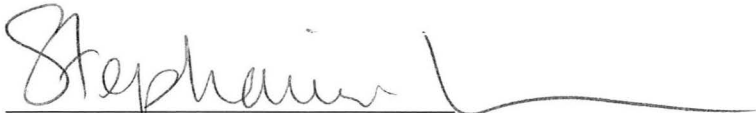
As discussed above, Applicants bear the burden of demonstrating that the proposed transaction is in the public interest. Because of the particular vulnerabilities of the customer base at issue, it is particularly important that the Commission ensure that those customers are protected. Low-income consumers are particularly sensitive to price increases, and could be disproportionately impacted by the proposed transaction's harmful effects. Accordingly, Greenlining respectfully requests that the Commission's analysis of the proposed transaction includes a robust discussion of that transaction's effects on vulnerable communities.

Respectfully submitted,

Dated: January 28, 2013



Paul S. Goodman
Legal Counsel
The Greenlining Institute



Stephanie Chen
Energy and Telecommunications Policy Director
The Greenlining Institute

DECLARATION OF PAUL GOODMAN

My name is Paul Goodman. I am Legal Counsel with The Greenlining Institute.

I am familiar with the contents of the foregoing Opening Comments of The Greenlining Institute. The factual assertions made in the Comments are true to the best of my knowledge and belief.

I declare the foregoing is true and correct.

Executed on January 28, 2013.

A handwritten signature in black ink, appearing to read 'Paul Goodman', is written above a horizontal line.

Paul Goodman
Legal Counsel

Certificate of Service

I hereby certify that on this 28th day of January, 2013, I caused true and correct copies of the foregoing Opening Comments of the Greenlining Institute to be served by electronic mail to:

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